

REMARKS

This paper is in response to the official action of January 28, 2004. This response is timely filed, as it is accompanied by a petition for automatic extension of time to file in the first month, and the requisite petition fee.

By the foregoing amendment, claims 2-5, 7, and non-elected claim 13 have been canceled. Claim 1 has been amended by incorporating the limitations of claim 5, characterizing the poly- α -glucan as substantially free of branching and at least 98% insoluble in water under specified standard conditions. Support is found at page 4, lines 37-39 and page 5, lines 20-27.

Claims 1, 6, 8-12, 14, and 15 remain at issue.

Reconsideration and withdrawal of the outstanding rejections are respectfully solicited.

The restriction requirement is mooted by cancellation of non-elected claim 13.

The objection to the specification under 35 U.S.C. § 112, first paragraph and the rejections of claims 1-12, 14, and 15 under 35 U.S.C. § 112, first and second paragraphs are believed to be mooted by the foregoing amendments, which omit the terms "biotechnologically obtained" and "obtained biocatalytically" from the claims.

The rejection of claim 1 as anticipated by Kossmann et al. is respectfully traversed.

Claim 1, as amended, recites a topical preparation comprising at least one linear poly-1,4- α -D-glucan substantially free of branching and at least 98% insoluble in water under specified standard conditions. It is submitted that there are no naturally occurring glucans falling within this definition, and that anticipation by Kossmann et al. is avoided on this basis alone, as Kossmann et al. does not disclose the use of such materials in a topical preparation, or for any other purpose.

In support of the anticipation rejection, reference is made in the official action to page 1, paragraph 2 of Kossmann, allegedly teaching the use of amylose compounds as useful for

producing non-toxic films, seen by the examiner indistinguishable from those compositions presently claimed.

Referring to the paragraph identified in the official action, the only application disclosed for non-toxic films made from α -1-4-glucans such as amylose are food applications, textiles, glass fibers, and paper production. Topical preparations are not disclosed.

The relevant passage in Kossmann clearly identifies amylose as a "frequently occurring natural" α -1-4-glucan, as opposed to the substantially unbranched, highly water insoluble poly-1,4- α -D-glucan of the present claims. Further, the anticipation rejection equates non-toxic films with topical preparations of the invention. This is not understood. The cited paragraph of Kossmann does not refer to topical preparations, defined in the present application as "a preparation for topical use." No known interpretation of the term "film" is known to equate to topical preparations.

The Kossmann reference does not teach the composition of its films, and it is therefore submitted that the anticipation rejection does not properly apply to the present claims. Reconsideration and withdrawal of the anticipation rejections are solicited.

The obviousness rejection of claims 1, 6, 8-10, 14, and 15 over Kossmann et al. is respectfully but strongly traversed. Reconsideration is requested.

The official action states that the "amylose compounds" claimed in the application are old and well known in combination with various pharmaceutical carriers and excipients in a dosage form. The examiner has not referred specifically to text in the Kossmann et al. reference supporting the statement. In any event, there is no disclosure in Kossmann of linear poly-1,4- α -D-glucans substantially free of branching and at least 98% insoluble in water under the standard conditions recited in the claims.

There is no suggestion in Kossmann that such properties are desirable, much less that a poly-1,4- α -D-glucan having such properties would be useful in a topical preparation.

The obviousness rejection of claims 11 and 12 as unpatentable over Kossmann et al. in view of Ikeda et al. and Schneider et al. is similarly traversed. Reconsideration is requested.

The rejection seems based on the assertion that Table 11 of Ikeda et al. could be taken that the amylose compounds of the invention were well known in combination with various pharmaceutical carriers and excipients in lipstick and cosmetic formulations. However, Table 11 of Ikeda et al. is completely silent on amylose compounds. Ikeda et al. teaches a solid oil and water cosmetic composition comprising water, a wax ester, and other components. Since Ikeda et al. is completely silent on amylose products, it is not seen how reliance on this reference can support an obviousness rejection of claims 11 and 12.

According to the examiner, Schneider et al. allegedly teach linear amylose compounds to be old and well known powder excipients useful for general formulation. However, Schneider et al. teach the use of amylose or a starch with more than 40% by weight amylose together with hydrophobic silica as an auxiliary in order to overcome the limitations of the prior art, which according to Schneider et al. has the disadvantage that the conversion of a dispersion of amylose and core substance into pulverulent products either was too industrially elaborate or provides particles which are too small. Motivation in Schneider et al. to arrive at the claimed invention is not found.

The present claims do not utilize any form of product by process language and it is therefore submitted that there is no basis in the art for determining that the polyglucan recited in the present claims is old. As such, reliance by the examiner on *In re Dillon* is misplaced as that case involves recitation of a new utility for an old composition.

Further, it is unclear from the official action whether Schneider et al. had been cited together with Kossmann et al. alone or with both Kossmann et al. and Ikeda et al. Further, it is unclear from the action whether Schneider et al. is being cited against claims 11 and 12,


claims 14 and 15, or claims 11, 12, 14, and 15, as the official action is confusing in this regard. Clarification is requested should the rejection be maintained.

In view of the foregoing amendments and remarks, it is submitted that claims 1, 6, 8-12, 14, and 15, as amended, are novel and inventive over the cited references, and an indication to that effect is solicited.

Should the examiner wish to discuss the foregoing or any matter of form in an effort to advance this application toward allowance, he is urged to telephone the undersigned at the indicated number.

Respectfully submitted,

MARSHALL, GERSTEIN & BORUN LLP

By: 
James P. Zeller
Reg. No. 28,491
Attorneys for Applicants

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6300 Sears Tower
233 South Wacker Drive
Chicago, Illinois 60606-6357
(312) 474-6300